Repco Holdings Sdn Bhd & Ors v Pengurusan Danaharta Nasional Bhd & Ors (No 2)

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO D3-22-1007 OF 1999
ABDUL WAHAB J
29 DECEMBER 1999

Civil Procedure *— Injunction — Injunction restraining special administrators from acting — Appointment of special administrators, whether valid — Meaning of 'affected persons' — Whether plaintiffs have overwhelming case without looking at balance of convenience — Whether unconstitutionality of Danaharta Act a serious issue to be considered — Balance of convenience — Preservation of status quo — Affidavit evidence cannot resolve issue of facts — Whether granting injunction would give plaintiffs all the relief they seek — Whether damages adequate remedy — Pengurusan Danaharta Bhd Act 1998 ss 21 & 24*

Sime Bank and Sime Merchant had granted various loans to some of the plaintiffs. Shares of some of the plaintiffs were pledged as securities for the loans. These loans were acquired by the first defendant ('Danaharta'). On the basis that the plaintiffs were borrowers and a subsidiary company whose shares were pledged for loan now taken over by Danaharta, the latter had acted to appoint the second and third defendants as special administrators ('the SA'). The plaintiffs have filed a writ against Danaharta and the SA appointed by Danaharta pursuant to s 24 of the Pengurusan Danaharta Bhd Act 1998 ('the Danaharta Act') claiming that the said appointment was void and invalid. The plaintiffs subsequently applied for an injunction ('encl 4') to restrain the SA from acting as such upon the basis of the claim that the appointment of the SA was invalid. It was argued that the statutory pre-condition in s 24 that the plaintiffs must be 'affected persons' within s 21 of the Danaharta Act has not been met. Various issues were raised, including bad faith on the defendants' part, unconstitutionality of the Danaharta Act and whether damages would be adequate remedy.

Held, refusing the application for an injunction:

(1) The plaintiffs do not have an overwhelming case so that an injunction would be granted without looking at the balance of convenience. They have not been able to show why the term 'affected persons' in s 24 — and which section is in Part VI of the Danaharta Act for which the s 21 definition is intended — requires a different meaning. On the face of it, the plaintiffs being borrowers with loans outstanding to Danaharta, and companies whose shares have been charged as security for such loans, clearly fall within the meaning of s 21 (see pp 644A, 646C, 647A).

(2) The suggestion that the defendants acted in bad faith, even possibly fraudulently would require very strong evidence. Given the nature of allegations of bad faith, collateral purpose and private motive, affidavit evidence is an inadequate basis for any

clear finding. Where it is disputed, oral evidence would be necessary before a finding is made thereon. The affidavits and documents produced and the submissions made in this application have not convinced the court that bad faith is sufficiently clear as to be a serious issue in considering this application (see p 652G–H).

(3) Whether or not disclosure had been made, and whether or not Danaharta is acting regardless of any disclosure is a matter in dispute. As is the question whether the plaintiffs are solvent. Until the facts are established by evidence, it would be premature for the court to make pronouncements on whether those provisions of the Danaharta Act are unconstitutional. The evidence produced as to the facts is unclear and is at best equivocal. A mere likelihood that the relevant provisions of the Danaharta Act is unconstitutional cannot be serious issue for the purpose consideration of an interlocutory injunction (see p 654F–H).

(4) The injunctions applied for amounts to substantially the entire relief. The plaintiffs have failed to show it has a clear case for the reliefs, or a high degree of assurance that the injunction if granted, would be rightly granted (see p 655A–B).

(5) There are issues of fact such as whether the claims of the plaintiffs had been disclosed, the actual financial position of the plaintiffs leading to whether the plaintiffs were unable or likely to be unable to pay its debts, that the actions of Danaharta, including the appointments of the second and third defendants were made in excess of jurisdiction and/or in bad faith, that cannot be resolved on the basis of the affidavit evidence before the court, but can only be dealt with finally in a full trial (see p 655B–C).

(6) Even accepting that these issues of fact are serious issues, the nature of the plaintiffs' interest is essentially financial where damages will be an adequate remedy (see p 655C–D).

(7) Even if the balance of convenience has to be considered, the appointment of the special administrators who are professionals, and reporting to an institution with specialised expertise such as Danaharta, could only contribute positively to the plaintiffs companies. The plaintiffs' position will not be adversely affected even if they succeed in the main suit. Danaharta would have no difficulty meeting any damages that might accurue. On the other hand, the interests of Danaharta could be severely and irreparably prejudiced if this injunction is granted, and the plaintiffs fail in the main suit (see p 655E–F).

[Bahasa Malaysia summary

Sime Bank dan Sime Merchant telah memberikan beberapa pinjaman kepada plaintif-plaintif. Sebahagian daripada saham-saham daripada plaintif-plaintif telah disandarkan sebagai jaminan untuk pinjaman-pinjaman tersebut. Pinjaman-pinjaman ini diperolehi oleh defendan

A pertama ('Danaharta'). Di atas dasar bahawa plaintif-plaintif adalah peminjam-peminjam dan anak syarikat di mana saham-saham telah disandarkan untuk pinjaman yang telah diambil alih oleh Danaharta, Danaharta telah bertindak dengan melantik defendan kedua dan ketiga sebagai pentadbir-pentadbir khas ('PK tersebut'). Plaintif-plaintif telah memfailkan writ terhadap Danaharta dan PK yang telah B dilantik oleh Danaharta menurut s 24 Akta Pengurusan Danaharta Nasional Berhad 1998 ('Akta Danaharta tersebut') dan menuntut bahawa perlantikan tersebut adalah batal dan tak sah. Kemudian plaintif-plaintif memohon untuk suatu injunksi ('lampiran 4) untuk menghalang PK daripada bertindak sedemikian atas dasar tuntutan C bahawa perlantikan PK adalah tak sah. Adalah dihujahkan bahawa pra-syarat statutori di bawah s 24 bahawa plaintif-plaintif mestilah 'pihak-pihak yang dijejaskan' di dalam maksud s 21 Akta Danaharta tersebut belum lagi dipenuhi. Pelbagai isu telah dibangkitkan, termasuk niat jahat di pihak defendan-defendan, ketidakberperlembagaan Akta Danaharta itu dan sama ada ganti rugi adalah D remedi yang mencukupi.

Diputuskan, menolak permohonan untuk injunksi:

(1) Plaintif-plaintif tidak mempunyai kes yang baik agar suatu injunksi diberikan tanpa melihat kepada imbangan kemudahan. Mereka tidak dapat menunjukkan kenapa terma 'pihak-pihak E yang terjejas' di dalam s 24, dan di mana seksyen tersebut terdapat di dalam Bahagian VI Akta Danaharta di mana definisi di bawah s 21 adalah diniatkan, memerlukan maksud yang berbeza. Di atas permukaannya, plaintif-plaintif yang merupakan peminjam-peminjam dengan baki pinjaman yang kena dibayar F kepada Danaharta, dan syarikat-syarikat di mana saham-saham telah disandarkan sebagai jaminan untuk pinjaman-pinjaman, jelas terjatuh di bawah maksud s 21 (lihat ms 644A, 646C, 647A).

(2) Cadangan bahawa defendan telah bertindak dengan niat jahat, atau berkemungkinan secara frod memerlukan bukti yang kuat. Memandangkan bentuk pengataan-pengataan niat jahat, tujuan G kolateral dan motif persendirian, keterangan afidavit adalah dasar yang tidak mencukupi untuk sebarang penemuan jelas. Di mana ia adalah dipertikaikan, keterangan lisan adalah perlu sebelum suatu penemuan dibuat. Afidavit-afidavit dan dokumen-dokumen yang dikemukakan dan hujahan-hujahan yang dibuat di H dalam permohonan ini tidak dapat menyakinkan mahkamah bahawa niat jahat tersebut adalah cukup jelas sehingga menjadi isu yang serius di dalam mempertimbangkan permohonan ini (lihat ms 652G–H).

(3) Sama ada pendedahan telah dibuat, dan sama ada atau tidak Danaharta telah bertindak tanpa mengira sebarang pendedahan I adalah suatu perkara yang dipertikaikan. Begitu juga persoalan-persoalan sama ada plaintif adalah solven. Sehingga fakta-fakta adalah dibuktikan melalui keterangan, adalah terlalu awal bagi

mahkamah untuk membuat keputusan sama ada peruntukan-peruntukan di dalam Danaharta adalah tidak berperlembagaan. Keterangan yang dikemukakan berkenaan dengan fakta-fakta adalah tidak jelas dan taksa. Suatu kemungkinan semata-mata bahawa peruntukan-peruntukan yang berkaitan dengan Akta Danaharta adalah tidak berperlembagaan bukanlah suatu isu yang serius bagi tujuan pertimbangan suatu injunksi interlokutori (lihat ms 654F–H).

(4) Injunksi-injunksi yang dipohon terjumlah kepada hampir keseluruhan relif-relif. Plaintif-plaintif telah gagal menunjukkan kes yang jelas untuk relif-relif, atau jaminan yang tinggi bahawa jika injunksi diberikan, ia akan diberikan secara wajar (lihat ms 655A–B).

(5) Terdapat isu-isu fakta sama ada tuntutan-tuntutan plaintif-plaintif telah didedahkan, kedudukan kewangan sebenar plaintif-plaintif yang menunjukkan sama ada plaintif-plaintif tidak dapat atau berkemungkinan tidak dapat membayar hutang-hutangnya, bahawa tindakan-tindakan Danaharta, termasuk perlantikan defendan kedua dan ketiga dibuat melampaui bidang kuasa dan/atau dengan niat jahat, yang tidak dapat diselesaikan berdasarkan keterangan affidavit di hadapan mahkamah, tetapi hanya boleh diselesaikan akhirnya di perbicaraan penuh (lihat ms 655B–C).

(6) Walau sekalipun isu-isu fakta adalah isu yang serius, bentuk kepentingan plaintif adalah berbentuk kewangan sahaja di mana ganti rugi adalah remedi yang mencukupi (lihat ms 655C–D).

(7) Walaupun imbangan kemudahan mesti dipertimbangkan, perlantikan pentadbir-pentadbir khas yang merupakan profesional-profesional, dan melaporkan kepada institusi dengan kepakaran khusus seperti Danaharta, boleh menyumbang secara positif kepada syarikat-syarikat plaintif. Kedudukan plaintif tidak akan dijejaskan dengan teruk walaupun mereka berjaya di dalam tindakan utama. Danaharta tiada kesukaran untuk memenuhi sebarang ganti rugi yang mungkin kena dibayar. Sebaliknya, kepentingan-kepentingan Danaharta akan diprejudiskan dengan teruk dan juga tidak boleh dibaiki jika injunksi diberikan dan plaintif-plaintif gagal di dalam tindakan utama (lihat ms 655E–F).]

Notes

For notes on affidavit in support of interim injunction, see 2(1) *Mallal's Digest* (4th Ed,1998 Reissue) para 218.

For notes on injunction, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 1927–2353

Cases referred to

Alor Janggus Soon Seng Trading Sdn Bhd & Ors v Sey Hoe Sdn Bhd & Ors [1995] 1 MLJ 241 (refd)

American Cyanamid Co v Ethicon Ltd [1975] 1 All ER 504 (refd)
Cayne v Global Natural Resources plc [1984] 1 All ER 225 (refd)
Chor Phaik Har v Farlim Properties Sdn Bhd [1994] 3 MLJ 345 (refd)
Collings Hui Sdn Bhd v United Estate Projects Bhd & Anor [1988] 3 MLJ 234 (refd)
Datuk Mohd Sari bin Datuk Hj Nuar v Idris Hydraulic (M) Sdn Bhd [1997] 5 MLJ 377 (refd)
Dewan Undangan Negeri Kelantan v Nordin bin Saleh & Anor [1992] 1 MLJ 697 (refd)
Duport Steels v Sirs [1980] 1 All ER 529 (refd)
Eng Mee Yong & Ors v V Letchumanan [1979] 2 MLJ 212 (refd)
Esso Petroleum Malaysia Inc v Kago Petroleum Sdn Bhd [1995] 1 MLJ 149 (refd)
Great Eastern Hotel Pte Ltd, Re [1989] 1 MLJ 89 (refd)
Great Eastern Hotel (Pte) Ltd, Re [1989] 1 MLJ 161 (refd)
Hock Hua Bank (Sabah) Bhd v Yong Liuk Thin Ors [1995] 2 MLJ 213 (refd)
Keet Gerald Francis Noel John v Mohd Noor bin Abdullah [1995] 1 MLJ 193 (refd)
Kesultanan Pahang v Sathask Realty Sdn Bhd [1998] 2 MLJ 513 (refd)
Knightsbridge Estates Trust Ltd v Byrne [1940] AC 613 (refd)
Lian Keow Sdn Bhd (In Liq) v Overseas Credit Finance (M) Sdn Bhd [1988] 2 MLJ 449 (refd)
Locabail International Finance Ltd v Agroexport [1986] 1 WLR 657 (refd)
Malayan Plant Pte Ltd v Moscow Narodny Bank Ltd [1980] 2 MLJ 53 (refd)
MBf Holdings Bhd v Emtex Corporation Bhd [1986] 1 MLJ 477 (refd)
Primlaks (UK) Ltd, Re [1989] BCLC 734 (refd)
Sanpete Builders (S) Pte Ltd, Re [1989] 1 MLJ 393 (refd)
Stock v Frank Jones (Tipton) Ltd [1978] 1 All ER 948 (refd)
Sugumar Balakrishnan v Pengarah Imigresen Negeri Sabah [1998] 3 MLJ 289 (refd)
Tan Boon Liat, Re [1976] 2 MLJ 83 (refd)
Tan Boon Liat, Re The Application of [1977] 2 MLJ 18 (refd)
Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan [1996] 1 MLJ 261 (refd)
Wyre Forest District Council v Secretary of State for the Environment [1990] 1 All ER 780 (refd)

Legislation referred to

Companies Act 1965 ss 218(1)(e), (2)(a), (c)
Courts of Judicature Act 1964 s 84
Federal Constitution arts 5(1), 8(1), 13(1)
Pengurusan Danaharta Nasional Bhd Act 1998 ss 13, 14, 21(c), 22(4), 24(1), (2), 25, 33, 51(3)(d)
Rules of the High Court 1980 O 18 r 19

S Suhendran (*N Navaratnam, Ranjit Singh* and *HL Ooi*) (*Ranjit, Ooi & Robert Low*) for the plaintiffs. A

T Thomas (*Alan A Gomez* and *Celine Celladuray*) (*Skrine & Co*) for the first defendant.

L Rasaratnam (*B Siva*) (*Lee Hishamuddin*) for the secong and third defendants.

B

Abdul Wahab J: The plaintiffs have filed a writ against the first defendant ('Danaharta') and the second and third defendants ('the SA') appointed by Danaharta pursuant to s 24 of the Pengurusan Danaharta Bhd Act 1998 ('the Danaharta Act') claiming that the said appointment is void and invalid. The plaintiffs are now applying for an injunction ('encl 4') to restrain the SA from acting as such upon the basis of the claim that the C appointment of the SA is invalid.

In applications of this nature it is important for the court to refrain from making a decision that in effect determines the issues finally. The danger lies from making such decisions when not all of the facts relevant to the issue are properly put and tested before the court and a finding is made thereon. D The Federal Court in *Alor Janggus Soon Seng Trading Sdn Bhd & Ors v Sey Hoe Sdn Bhd & Ors* [1995] 1 MLJ 241 set out the perspective in approaching interlocutory injunctions clearly as follows (at p 266):

> At an interlocutory proceeding for an injunction the court is not called upon nor is it desirable for the court to decide finally on the rights of the parties but the court must be satisfied that there is a serious issue to be tried. E

A summary of the inquiry to be made in hearing an application for an interlocutory injunction has been summarised in *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah* [1995] 1 MLJ 193 (CA) at pp 206–207 the court should undertake an inquiry along the following lines:

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(1) he must ask himself whether the totality of the facts presented before him discloses a bona fide serious issue to be tried. He must, when considering this question, bear in mind that the pleadings and evidence are incomplete at that stage. Above all, he must refrain from making any determination on the merits of the claim or any defence to it. It is sufficient if he identifies with precision the issues raised on the joinder and decides whether these are serious enough to merit a trial. If he finds, upon a consideration of all the relevant material before him, including submissions of counsel, that no serious question is disclosed, that is an end of the matter and the relief is refused. On the other hand if he does find that there are serious questions to be tried, he should move on to the next step of his inquiry; G

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(2) having found that an issue has been disclosed that requires further investigation, he must consider where the justice of the case lies. In making his assessment, he must take into account all relevant matters, including the practical realities of the case before him. He must weigh the harm that the injunction would produce by its grant against the harm that would result from its refusal. He is entitled to take into account, inter alia, the relative financial standing of the litigants before him. If after weighing all matters, he comes to the conclusion that the plaintiff would suffer greater injustice if relief is withheld, then he would be entitled to grant the injunction especially if he is satisfied that the plaintiff is in a financial I

position to meet his undertaking in damages. Similarly, if he concludes that the defendant would suffer the greater injustice by the grant of an injunction, he would be entitled to refuse relief. Of course, cases may arise where the injustice to the plaintiff is so manifest that the judge would be entitled to dispense with the usual undertaking as to damages (see *Cheng Hang Guan & Ors v Perumahan Farlim (Penang) Sdn Bhd & Ors* [1988] 3 MLJ 90). Apart from such cases, the judge is entitled to take into account the plaintiff's ability to meet his undertaking in damages should the suit fail, and, in appropriate cases, may require the plaintiff to secure his undertaking, for example, by providing a bank guarantee; and

(3) the judge must have in the forefront of his mind that the remedy that he is asked to administer is discretionary, intended to produce a just result for the period between the date of the application and the trial proper and intended to maintain the status quo, an expression explained by Lord Diplock in *Garden Cottage Foods Ltd v Milk Marketing Board* [1984] AC 130; [1983] 2 All ER 770; [1983] 3 WLR 143 and applied in *Cheng Hang Guan*. It is a judicial discretion capable of correction on appeal. Accordingly, the judge would be entitled to take into account all discretionary considerations, such as delay in the making of the application or any adequate alternative remedy that would satisfy the plaintiff's equity, such as an award of monetary compensation in the event that he succeeds in establishing his claim at the trial. Any question going to the public interest may, and in appropriate cases should, be taken into account. A judge should briefly set out in his judgement the several factors that weighed in his mind when arriving at his conclusion.

Thus it must be shown that there are serious issues to be tried and thereafter the adequacy of damages and balance of convenience will be addressed. I proceed to the major parts of the issues raised by the parties. There are five main grounds raised.

(1) That on the true construction of the Danaharta Act, there are statutory pre-conditions which must be met before Danaharta is able to exercise its powers to appoint the SA. If the pre-conditions are not met, Danaharta would have exceeded its jurisdiction in making the appointment. The effect of an act made in excess of jurisdiction is that it is void and of no effect whatsoever: *Wade, Administrative Law*; *Badiaddin bin Mohd Mahidin v Arab Malaysian Finance Bhd* [1998] 1 MLJ 393 (at p 409, 410 per Azmi FCJ).

(2) That the appointment was made in bad faith and is therefore bad. The exercise of a statutory power for collateral purposes is an act of bad faith and is invalid: *Halsbury* Vol 1(1) para 74.

(3) That in making the appointment, Danaharta took into consideration irrelevant considerations, and is therefore an error of law: *Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers Union* [1995] 2 MLJ 317. It is considered to be an act in excess of jurisdiction and a nullity.

(4) That appointment provisions under the Danaharta Act are unconstitutional and therefore the appointment of the SA is entirely void and a nullity.

(5) That the SA ought to be disqualified from acting as such.

The plaintiffs have also sought to argue in the alternative: the case of the plaintiffs or any one or more of them is so clear that as an exception to

American Cyanamid Co v Ethicon Ltd [1975] 1 All ER 504, an injunction ought to be granted without even looking at the balance of convenience: *Collings Hui Sdn Bhd v United Estate Projects Bhd & Anor* [1988] 3 MLJ 234. It was held where the plaintiff's case is so overwhelming, an injunction would be granted without looking at the balance of convenience. The principle in *Collings Hui Sdn Bhd v United Estate Projects Bhd & Anor* is consistent with the principle expressed in *Alor Janggus & Ors v Sey Hoe Sdn Bhd & Ors* and *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah* that there must be a serious issue. The term 'a serious issue' does not refer to the magnitude of the claim involved, but to the strength of the case. An application for interlocutory injunction must show sufficient evidence to demonstrate that the issues that it has raised in its suit are serious, in the sense that the issues warrant serious consideration because there is substantial evidence. If it is unable to do so, then an interlocutory injunction would not be considered. If it able to do so, then the court would go on to consider the questions of adequacy of damages, and if damages would be inadequate, then only to consider where the balance of convenience would lie. Where the applicant is able to show that its evidence is so clear and overwhelming, in effect show that it has a plain and obvious case in its claim, then in such a case damages and balance of convenience are of no relevance and an interlocutory injunction would be granted.

The plaintiffs argue they have an overwhelming case. Their starting point is the argument:

> That the statutory pre-condition in s 24 of the Danaharta Act that the plaintiffs must be 'affected persons' within s 21 of the Danaharta Act has not been met.
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> That with respect to Everise Ventures, the statutory pre-condition in s 24 of the Danaharta Act that Everise Ventures must be insolvent has not been met.

Section 24 of the Danaharta Act provides:

> (1) Subject to s 25, the Corporation may recommend to the Oversight Committee the appointment of a Special Administrator of an affected person, if the Corporation is satisfied that the affected person —
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> (a) is unable or likely to be unable to pay its debts; or
>
> (b) is unable or likely to be unable to fulfill its obligations to its creditors.
>
> (2) The Corporation may, with the written approval of the Oversight Committee, appoint the Special Administrator.

An affected person is defined in s 21 as follows:

> In this Part, unless the context otherwise requires:
>
> 'affected person' means:
>
> (a) any company owing a duty or obligation under a credit facility to the Corporation or any subsidiary of the Corporation, whether present or future, or whether vested or contingent; or

A (b) a subsidiary of the company referred to in paragraph (a) who has provided security for the performance of or discharge of the duty or obligation of the company; or

(c) a subsidiary of the company referred to in paragraph (a) whose share capital has been charged, pledged or mortgaged by the company to secure the performance of or discharge of the duty or obligation of the company.

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Sime Bank and Sime Merchant had granted various loans to some of the plaintiffs. Shares of some of the plaintiffs were pledged as securities for the loans. These loans were acquired by Danaharta. Thus the plaintiffs now owe their obligations to Danaharta. On the basis that the plaintiffs were C borrowers and a subsidiary company whose shares were pledged for loan now taken over by Danaharta, the latter had acted to appoint special administrators.

The plaintiffs argue the words '... the appointment of special administrators with powers to administer and manage persons whose *assets* D *or liabilities have been so acquired*' in the long title, '... [SA] may be appointed expeditiously to administer and manage persons whose assets or liabilities have been so acquired.' In the third preamble, explanations in Hansard that 'Danaharta is for the specific purpose of acquiring non-performing loans from financial institutions, that it should have the ability to manage and settle the assets and liabilities so acquired..., that duties of the special E administrators [SA] are limited to the proposing of schemes for the acquisition, recovery and reselling of the loan and the assets involved, and every asset acquisition is negotiated between the bank or financial institution and Danaharta' and 'The position of the borrower is thereby unaltered' mean that the SA ought to be appointed over the banks and not the borrowers.

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Hansard and the long title in an Act were previously only resorted to only where there is ambiguity in the main Act: see *Re Tan Boon Liat* [1976] 2 MLJ 83; *Re the application of Tan Boon Liat* [1977] 2 MLJ 18; *Chor Phaik Har v Farlim Properties Sdn Bhd* [1994] 3 MLJ 345. It was submitted that with the Interpretation (Amendment) Act 1997 effective 24 July 1997 that G it is clear from s 15 that the long title and the preamble form part of the Act, and according to s 17A, an interpretation which would promote the purpose and object of the Act must be given effect to. Relying upon *MBf Holdings Bhd v Emtex Corporation Bhd* [1986] 1 MLJ 477 where Seah SCJ in his dissenting judgment said that the preamble provide an extremely good indication of the purpose of the Act in question, it was argued that special H administrators could be appointed only over banks and financial institutions, and the position borrowers from the banks and financial institutions remain unaltered.

In *Wyre Forest District Council v Secretary of State for the Environment* [1990] 1 All ER 780 at p 785 , a case of the House of Lords, it was said that I if Parliament has defined the terms in an enactment, then in the absence of a clear indication to the contrary, it must be taken that it intends those definitions to govern. Section 21 is a specific interpretation clause for the

specific purpose of Part VI of the Danaharta Act relating to the management of assets and liabilities. Such an interpretation clause is of greater specificity than a clause that applies generally to the whole of the Danaharta Act. Clearly notwithstanding the general terms in the long title and the preamble, Parliament intended the term 'affected persons' to have the specific meanings given to it in s 21 for the specific purpose of Part VI of the Danaharta Act. The words of the Danaharta Act in s 21 are clear and unambiguous, and it is not for judges to invent fancied ambiguities: *Duport Steels v Sirs* [1980] 1 All ER 529 at p 541, per Lord Diplock. It would be incumbent upon the plaintiffs who contend that 'affected persons' should have a different meaning to show that the context requires a different meaning: *Knightsbridge Estates Trust Ltd v Byrne* [1940] AC 613. The plaintiffs have not been able to show why the term 'affected persons' in s 24, and which section is in Part VI of the Danaharta Act for which the s 21 definition is intended, requires a different meaning. In *Stock v Frank Jones (Tipton) Ltd* [1978] 1 All ER 948; it was said (at p 954):

> ... dislike of the effect of a statute has never been an accepted reason for departing from its plain language. Holt CJ said nearly three centuries ago: 'An Act of Parliament can do no wrong, though it may do several things that look pretty odd' (*City of London v Wood* (1701) 12 Mod Rep 669 at p 687). Accordingly, even if one regarded the policy implicit in [the Act concerned] as open to criticism, [if] the statutory language is clear beyond doubt ... [it] must prevail.

The words and meaning of s 21 defining who the affected persons are is clear. The uncertainty, if at all, actually comes from the explanations in Hansard. The long title and the preamble referred to persons whose assets and liabilities have been acquired. Loans given out by the banks and financial institutions are assets, and not liabilities. What is the purpose of appointing a special administrator over the banks and financial institutions after their non performing loans are taken over by Danaharta ? There is no reason to do so. The phrase assets and liabilities become more consistent in meaning when applied to the assets and liabilities of borrowers, when their borrowings from the banks and financial institutions are taken over by Danaharta. While the long title and the preamble form part of the Danaharta Act, there is nothing to say that the rest of the provisions of the Danaharta Act must be read subject to the preamble and long title; or that the purpose or object of the Danaharta Act as described in Hansard, or the long title and preamble if interpreted to mean banks and financial institutions, will be any less promoted or achieved by applying the clear and literal meaning to s 21 to include appointment of special administrators over companies falling within the description of s 24.

As alluded to earlier above, there is little or no purpose to appoint a special administrator over a bank or financial institution after the non performing loan is bought over by Danaharta. But appointing a special administrator over the borrower and other assets within the meaning of s 21 could serve to put its house in the best light possible on a transparent and accountable basis, and to make it possible to recover the non performing loan, be it by the operation until, and after disposal of the asset, at an

A opportune time and in better circumstances as intended by the Danaharta Act.

On the face of it, the plaintiffs, being borrowers with loans outstanding to Danaharta, and companies whose shares have been charged as security for such loans, clearly fall within the meaning of s 21.

B Concern was expressed that the defendants are seeking to dispose of the shares in Everise Ventures. I do not think this is a valid concern on that ground per se. That those shares have been charged to Sime Bank is not disputed. That Danaharta has bought over the loan account from Sime Bank is also not disputed. The sale of the shares to realize the loan facility is a contractual right granted by the plaintiffs when the shares of Everise C Ventures were charged for the facility. Irrespective of the Danaharta Act, Danaharta has the rights of a lender. The established principles of *American Cyanamid* in respect of interlocutory injunctions would apply: see *Esso Petroleum Malaysia Inc v Kago Petroleum Sdn Bhd* [1995] 1 MLJ 149.

The argument that the preconditions to the appointment contained in D s 25 that the appointment would serve the public interest have not been met takes little heed that the public interest is not the only precondition by the use of the word 'or' in s 25:

> The Corporation may recommend the appointment of a Special Administrator under s 23 or 24 if the Corporation is satisfied that it would serve public interest to do so or one or both of the following purposes could E be achieved:
>
> (a) the survival of the affected person and the whole or any parts of its assets as a going concern;
>
> (b) a more advantageous realisation of the affected person's assets would be achieved than on a winding up.

F There are in fact three possible basis, and the worst case, depending on who is looking at it, is the third basis. I would also reject this argument.

Another argument raised was that there was no oversight committee approval as required under s 24(2). The oversight committee approval would appear from a reading of the Danaharta Act to be an independent G safeguard against an overzealous Danaharta management. The oversight committee is an independent committee, but is within Danaharta. On the day before the hearing an affidavit was filed exhibiting a copy of the oversight committee approval on 6 March 1999. It is clear then that approval has been given by the oversight committee. I would reject this argument also.

H

Section 24(1) provides further that if the corporation is satisfied that the affected person is '*unable or likely to be unable* to pay its debts or fulfil its obligations to its creditors', the corporation may recommend to the oversight committee the appointment of a special administrator.

It was argued for the plaintiff, that Everise Ventures Sdn Bhd (Everise I Ventures), as at 31 March 1999 and shortly before the appointment of the special administrators, was solvent as it had a surplus of assets over liabilities, current assets over current liabilities, and there are no loans or

borrowings by Everise Ventures from Danaharta. In view of s 21(c), that there are no loans or borrowings by Everise Ventures from Danaharta does not exclude Everise Ventures from the application of the Danaharta Act.

The solvency of Everise Ventures is disputed by the special administrators who say that Everise Ventures is insolvent. The SA referred to a balance sheet as at 30 June 1999 showing that there is a deficit of current assets over current liabilities. It is argued for Everise Ventures that because total assets exceed total liabilities, the plaintiff is not insolvent.

The issue then is whether a deficit of current assets over current liabilities means that Everise Ventures is unable or likely to be unable to pay its debts or fulfil its obligations to its creditors. The phrase is not defined in the Danaharta Act.

It is clear enough that, in terms of assets and liabilities, a company is insolvent if its overall liabilities exceed overall assets: see for example *Datuk Mohd Sari bin Datuk Hj Nuar v Idris Hydraulic (M) Sdn Bhd* [1997] 5 MLJ 377, 378. It is equally clear that the mere fact current liabilities exceed current assets does not mean the company is insolvent, at least in the short term (see *Re Great Eastern Hotel (Pte) Ltd* [1989] 1 MLJ 161). It was argued on the basis of similar wording in the Companies Act and following *Malayan Plant Pte Ltd v Moscow Narodny Bank Ltd* [1980] 2 MLJ 53; *Lian Keow Sdn Bhd (In liq) v Overseas Credit Finance (M) Sdn Bhd* [1988] 2 MLJ 449; *Re Great Eastern Hotel Pte Ltd* [1989] 1 MLJ 89, the phrase 'unable to or likely to be unable to pay ...' must be given the meaning of inability to pay current debts and not future debts.

Section 218 of the Companies Act provides as follows:

> Circumstances in which company may be wound up by court
>
> (1) The court may order the winding up if:
>
> (e) the company is unable to pay its debts; ... .
>
> Definition of inability to pay debts
>
> (2) A company shall be deemed to be unable to pay its debts if:
>
> (a) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding five hundred ringgit then due has served on the company by leaving at the registered office a demand under his hand or under the hand of his agent thereunto lawfully authorized requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; ...
>
> (c) it is proved to the satisfaction of the court that the company is unable to pay its debts; and in determining whether a company is unable to pay its debts the court shall take into account the contingent and prospective liabilities of the company.

Unlike the Danaharta Act, the Companies Act uses the term 'unable to pay its debts' only, and s 218(2)(c) was included to enlarge the meaning of 'unable to pay its debts' to include future incapacity. It did so by requiring

A the court to take into account the contingent and prospective liabilities of the company, in other words, future debts. But it does not follow that because there is no similar provision in the Danaharta Act to s 218(2)(c), s 24(1) of the Danaharta Act does not apply to future debts, because s 24(1) has the further words 'or likely to be unable ...'.

B As to 'likely to be unable to...' the plaintiffs referred to *Re Primlaks (UK) Ltd* [1989] BCLC 734 where it was held:

> So, the phrase 'likely to be unable to meet its debts' means whether a company currently unable to pay its debts as they fall due will probably be unable to pay them in the future: ... .

C In my opinion, it is wrong to interpret *Re Primlaks (UK) Ltd* as restricting the meaning of 'likely to be unable to ...' only to such a likelihood arising from a present inability to pay. That case was referring to the specific instance under the Companies Act. Ordinarily, likelihood of inability to pay may arise from a number of circumstances and not necessarily from a present inability to pay only. If it is to be so restricted, there would be no D purpose in adding the words 'likely to be unable to pay' because the company would already have been a company who is unable to pay its debts. I would therefore dismiss that argument.

The plaintiffs have sought to argue that because the special administrators could only point to a deficit of current assets over current E liabilities, the plaintiffs are not necessarily unable to pay their debts. Even if the argument is accepted, it ignores: (a) that s 24(1) refers not only to 'unable to pay' but also to 'likely to be unable to pay'; and (b) a company whose current liabilities exceed current assets is very likely to be unable to pay its debts as they fall due. This would appear to describe the current position of the plaintiffs. It is clear there are non performing loans F outstanding. The plaintiffs have not been able to settle the loan, otherwise there would not have been a non performing loan and this entire matter would not have arisen.

To summarise, even if it is accepted that a company with current liabilities exceeding current assets is not necessarily a company unable to G pay its debts, such a company is clearly *likely* to be unable to pay its debts, and although whether the plaintiffs are insolvent or otherwise is disputed, the circumstances tend to show there is some substance to the assertions of the special administrators. The audited financial report of the plaintiffs group and of Everise Ventures showed: (i) the group had an accumulated loss of RM54.16m, deficit of assets over liabilities of RM35.45m and H negative cash flow of RM17.16m; and (ii) the Everise Ventures had a deficit of current assets over liabilities of RM14.6m. There is no evidence that the assets are worth much more if revalued. Assertions to that end, is therefore speculative, especially in the light of the current economic situation.

It must also be noted that unlike the language of s 218 of the I Companies Act: '(1) The court may order the winding up if — ... (e) the company is unable to pay its debts, s 24(1) uses the words 'if the Corporation is satisfied that the affected person — (a) is unable or likely to

be unable to pay ...'. Satisfaction in this context introduces a subjective element into the question of whether the affected person is unable or likely to be unable to pay it debts or fulfil its obligations. Where Parliament by clear and unambiguous words empowers the corporation to exercise a subjective element in the evaluation, as compared to the purely objective basis in s 218 of the Companies Act, the courts would be reluctant to interfere except upon evidence is plainly wrong to be satisfied, or that there has been an abuse of the exercise of the discretion. Now, while collateral motives have been alleged, the affidavit evidence has failed to demonstrate any such abuse.

In their reply, the plaintiffs said that Everise Ventures is being acquired by Repco and will form part of the group, when certain sums due to minority shareholders could be taken out of current liabilities and Everise Ventures would have a surplus of total assets over liabilities even if the holding company's debt has to be considered irrecoverable. These arguments are irrelevant since these actions have not eventuated at the time Danaharta was satisfied Everise Ventures was likely to be unable to pay its debts and took action under the Danaharta Act.

I conclude in respect of Everise Ventures, that as a company whose shares had been pledged, it is an affected person within the meaning of s 21(c) of the Danaharta Act, and although it is disputed as to whether it is 'unable or likely to be unable to pay ...', it is clear that the assertion that it is insolvent or at least likely to be unable to pay, is not clearly or entirely to be without basis. In the circumstances Danaharta cannot be said to have no basis to be satisfied that Everise Ventures was at least likely to be unable to pay its debts.

In arguing the solvency of the other plaintiffs, it was argued that Sime Bank had misappropriated RM164m from the third plaintiff, Everise Capital, which could have been used to service the loans of the plaintiffs. This argument is related to the issue whether the claim by the plaintiffs has been disclosed to Danaharta. The amount in fact outstanding is questioned, as is the basis of valuation of assets for current value, and the answers in submissions have been unable to make the matters clear. The plaintiffs have also filed suit against Sime Bank. But the fact suits have been filed is not by itself proof that a court could be satisfied with to show that the plaintiffs are able to pay its debts: *Re Sanpete Builders (S) Pte Ltd* [1989] 1 MLJ 393. Even if it is true a sum of RM164m has been misappropriated by Sime Bank, the fact remains that the plaintiffs are without the said sum, and without the RM164m, the plaintiffs are unable or at least likely to be unable to pay its debts.

The plaintiffs object to the appointment of the special administrators on the grounds that they are from Price-Waterhouse Coopers, created as a result of a merger between Coopers & Lybrand and Price Waterhouse, and Price Waterhouse was the auditors of the plaintiffs who signed off on the accounts on 20 November 1997. Thus a two year guideline applicable to receivers has been infringed. While there may be features of the functions of a special administrator that is similar to receivers, they are not receivers.

There is no such restriction in relation to special administrators in s 51 of the Danaharta Act with deals with the qualifications and disqualification of special administrators.

The plaintiffs have also failed to show how the alleged conflict occurs. There is no suggestion that the second and third defendants had personally been the auditors for the plaintiffs. Price-Waterhouse was the auditor of the first to fourth plaintiffs for the financial years ending June 1996 and June 1997. Price-Waterhouse as such was no longer the auditor of the plaintiffs after that. The matters at issue in this case arose after that period. Price-Waterhouse is therefore not disqualified under s 51(3)(d) of the Danaharta Act. Coopers Lybrand was the reporting accountants with regard to a consolidated profit forecast prepared for the first plaintiff and submitted to the Kuala Lumpur Stock Exchange. The function of the reporting accountants were to review the forecast and to report whether the forecast accords with the basis and assumptions of the directors of the first plaintiff, who remain responsible for those basis and assumptions.

It was alleged that the acts of the defendants were likely to cause damage. It was not disputed the second and third defendants are partners of PriceWaterhouse-Coopers, a firm of recognized standing internationally. There is no evidence the directors of the plaintiffs possess special skills not possessed by the special administrators, to operate the companies and to deal with their current financial problems. In this regard it is pertinent to note that to a substantial extent the loan problem stem from a loan of RM260m by the third plaintiff who had a paid-up capital of RM7.5m, to engage in share trading activities, and incurring a loss of RM70.68m. Other than the displacement of the boards of directors of the plaintiffs, their management and other staff had been retained. There was no evidence of any damage and on the other hand the SA have established that they have managed the companies reasonably within recognised business principles. There is no basis in the circumstances to support the suggestion that the acts of the defendants are likely to cause damage.

Some attention ought to be given to s 22(4) which provides:

> The decision of the oversight committee shall be final and binding and shall not be reviewed, quashed, appealed against or set aside by the court.

The appointment of the second and third defendants having been approved by the oversight committee, s 22(4) renders the appointment final and cannot be reviewed, quashed, appealed against or set aside by the court. To grant an injunction in the circumstances would be contrary to the spirit and intent of Parliament in enacting s 22(4). I would also reject this ground.

There were submissions objecting to alleged statements by the SA that the plaintiff's must take a 'hit'. Whilst the sound of the word appears ominous, the fact remains that shareholders stand behind secured and unsecured creditors in priority. That may result in shareholders getting less than their investment.

It was also submitted that the appointment of the special administrators was made in bad faith and a collateral purpose, and that there was a private

motive. The allegation here is that Danaharta found it had made a mistake when acquiring the loans from Sime Bank when it overlooked the plaintiffs claim against Sime Bank and Sime Securities of which it had notice since September 1998. It was alleged that there was refusal to provide the documents supporting the vesting certificates when asked for, and there was backdating of vesting certificates. The allegations were denied. In the face of denials and absence of any evidence, it cannot be given much weight at this stage.

It is important to appreciate that these arguments are made on affidavit evidence only. In *Hock Hua Bank (Sabah) Bhd v Yong Liuk Thin Ors* [1995] 2 MLJ 213 (CA), Gopal Sri Ram JCA held:

> Whenever a court is required to judicially appreciate affidavit evidence, it is a necessary adjunct of that function for the court to ascertain whether allegations made are inherently improbable or inherently incredible or patently inconsistent with contemporaneous documents. Whether such an analysis ought to be undertaken, depends upon the jurisdiction the court is exercising and, more importantly, upon the particular facts of a case.

Nevertheless I am also mindful of the decision in *Eng Mee Yong & Ors v V Letchumanan* [1979] 2 MLJ 212 (PC) where it was held as to affidavit evidence (at p 217):

> Although in the normal way it is not appropriate for a judge to attempt to resolve conflicts of evidence on affidavit, this does not mean that he is bound to accept uncritically, as raising a dispute of fact which calls for further investigation, every statement on an affidavit however equivocal, lacking in precision, inconsistent with undisputed contemporary documents or other statements by the same deponent, or inherently improbable in itself it may be. In making such order on the application as he 'may think just' the judge is vested with a discretion which he must exercise judicially. It is for him to determine in the first instance whether statements contained in affidavits that are relied upon as raising a conflict of evidence upon a relevant fact have sufficient *prima facie* plausibility to merit further investigation as to their truth.

The defendants have denied the allegations. In addition, the first defendant is an institution created to deal with a major crisis in a professional manner subject to various controls in the Danaharta Act. The second and third defendants are professionals. The suggestion that they acted in bad faith, even possibly fraudulently would require very strong evidence. Given the nature of allegations of bad faith, collateral purpose and private motive, affidavit evidence is an inadequate basis for any clear finding. Where it is disputed, oral evidence would be necessary before a finding is made thereon. The affidavits and documents produced and the submissions made in this application have not convinced me that bad faith is sufficiently clear as to be a serious issue in considering this application.

On the basis of the evidence placed before the court in this application the injunctions as applied for are unwarranted, and if granted on such basis would defeat the very purpose for which the Danaharta Act was passed.

A It was argued that there are constitutional issues with regard to various provisions of the Danaharta Act:

(1) the acquisition by the Corporation, the subsequent vesting under s 14 free of any claim and the method of appointment of the Special Administrator (SA) contravenes arts 5(1) and 8(1) of the Federal Constitution.

B

(2) the vesting provisions, in particular s 14(3) and 14(6) and the consequences flowing therefrom amount to an unlawful deprivation of property contrary to art 13(1) of the Federal Constitution and a compulsory acquisition or use of property without adequate compensation contrary to art 13(2) of the Federal Constitution.

C Article 5(1) of the Federal Constitution provides:

> No person shall be deprived of his life or personal property save in accordance with law.

The article is of no assistance to the plaintiffs because there is no suggestion D that the Danaharta Act has not been passed regularly by Parliament. All acts of Parliament are deemed to have been performed regularly unless shown to be otherwise. The Danaharta Act having been passed regularly, it is law. Only acts not according to law would breach art 5(1). This is inherent in the principle, for example, that an act in excess of jurisdiction or the law is void and of no effect. Furthermore fundamental rights enshrined in the Federal E Constitution applies only to natural persons, not artificial persons such as companies: *Kesultanan Pahang v Sathask Realty Sdn Bhd* [1998] 2 MLJ 513.

Article 8(1) of the Federal Constitution provides:

> All persons are equal before the law and are entitled to equal protection of the law.

F It was submitted that ss 13, 14, 24, 31 and 33 of the Danaharta Act, dealing with issuance and effect of vesting certificates, disclosure of claims, mechanism of appointment of special administrators, powers of special administrators and cessation of functions of the board of directors of affected persons are manifestly unjust. It was argued it is only the seller of G the asset who is required to disclose claims, and it may not be in their interest to disclose claims by third parties as they will get less if the claims are disclosed, yet these third parties would be shut out of their rights against Danaharta because their claims have not been disclosed. Furthermore, the special administrators are appointed over affected persons, displacing their boards of directors without having been heard, rendering the fundamental H rights of the plaintiffs illusory. It was argued the legislation is arbitrary and unfair (*Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan*[1996] 1 MLJ 261; *Dewan Undangan Negeri Kelantan v Nordin bin Saleh & Anor* [1992] 1 MLJ 697; *Sugumar Balakrishnan v Pengarah Imigresen Negeri Sabah* [1998] 3 MLJ 289). It was submitted that the appointment of the special administrators deprived the affected person, which is a company, of I the custody or control of its assets and essentially deprives the company of its livelihood, for which no adequate compensation has been given, and contrary to art 13 which provides:

(1) No person shall be deprived of property save in accordance with law; A

(2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

The submission that third parties would be shut out of their rights if the sellers of the loans do not declare the interest of such third parties ignores s 15(1) of the Danaharta Act which preserves the right to be compensated. B

In rejecting the defendants' application to strike the plaintiffs' suit on the grounds that it frivolous and vexatious, I had said:

> Thirdly, the plaintiffs have questioned whether these provisions breached their constitutional rights under arts 5 and 13 of the Federal Constitution. Consideration may have to be given as to whether such questions ought to be C referred to the Federal Court by way of case stated under s 84 of the Courts of Judicature Act 1964. Certainly the length and scope of submissions underlines that there are questions of fact that need to be tried, and legal issues that require careful consideration and cannot be summarily dismissed under O 18 r 19.

D

Whether or not there are serious questions on constitutionality and properly arising in this suit will depend on the evidence produced. Then only would it be necessary to consider whether to refer the questions under s 84 of the Courts of Judicature Act 1964. The rejection of the O 18 r 19 of the Rules of the High Court 1980 is on the ground that the arguments are not frivolous and vexatious. That is not to say that all of the issues raised are E considered serious issues. The question in that application was whether the plaintiffs' suit was a case where the justice of the defendants' case was plain and obvious, or that the proceeding by the plaintiffs was an improper use of the court's machinery. In this application I have to consider first whether there are serious issues.

F

The pivotal parts of the plaintiffs arguments are whether disclosure of the claims by the plaintiff has been made and whether the plaintiffs are not 'unable or likely to be unable to pay its debts..'. If disclosure has been made, and the plaintiffs are solvent, these arguments are not relevant. Whether or not disclosure had been made, and whether or not Danaharta is acting regardless of any disclosure is a matter in dispute. As is the question whether G the plaintiffs are solvent. Until the facts are established by evidence, it would be premature for the court to make pronouncements on whether those provisions of the Danaharta Act are unconstitutional. The evidence produced as to the facts is unclear and is at best equivocal. A mere likelihood that the relevant provisions of the Danaharta Act is unconstitutional cannot be serious issue for the purpose of consideration of H an interlocutory injunction.

The issue is whether with regards to the disputed facts, the plaintiffs have advanced sufficient evidence to show they are serious issues.

It is obvious then from the foregoing that the plaintiffs, including Everise Ventures, clearly do not have such an overwhelming case as to I attract the *Cayne v Global Natural Resources plc* [1984] 1 All ER 225 as applied in *Collings Hui Sdn Bhd v United Estates Project Bhd & Anor* for an

A interlocutory injunction to be granted outright without consideration of adequacy of damages and the balance of convenience.

In addition, the injunctions applied for amounts to substantially the entire relief. The plaintiffs have failed to show it has a clear case for the reliefs, or a high degree of assurance that the injunction if granted, would
B be rightly granted: see *Locabail International Finance Ltd v Agroexport* [1986] 1 WLR 657.

It is also obvious from the foregoing that there are issues of fact such as the whether the claims of the plaintiffs had been disclosed, the actual financial position of the plaintiffs leading to whether the plaintiffs were unable or likely to be unable to pay its debts, that the actions of Danaharta,
C including the appointments of the second and third defendants were made in excess of jurisdiction and/or in bad faith, that cannot be resolved on the basis of the affidavit evidence before me, but can only be dealt with finally in a full trial.

However even accepting that these issues of fact are serious issues, the
D nature of the plaintiffs' interest is essentially financial where damages will be an adequate remedy. The plaintiffs are a business group. There is nothing to say that the investments are of any special or sentimental value that cannot be compensated by damages. Danaharta, set up by the Government of Malaysia, is in a better position than many financial institutions to meet any damages ordered. Since the plaintiffs can be
E adequately compensated in damages, there is little basis for an interlocutory injunction.

Even if the balance of convenience has to be considered, the appointment of the special administrators who are professionals, and reporting to an institution with specialised expertise such as Danaharta,
F could only contribute positively to the plaintiff companies. The fact of this suit itself would put the defendants on notice in the interim period so as to be doubly cautious in their actions. On the other hand if the interlocutory injunction is granted as to the appointment of special administrators would leave Danaharta to proceed with commencing the usual recovery proceedings including winding-up. I am of the view that the plaintiffs
G position will not be adversely affected even if they succeed in the main suit. Danaharta would have no difficulty meeting any damages that might accrue. On the other hand the interests of Danaharta could be severely and irreparably prejudiced if this injunction is granted, and the plaintiffs fail in the main suit. There is no evidence advanced that the plaintiffs have the necessary financial wherewithal to carry on the operations of the plaintiff
H companies for any period of time if this application is granted. Of the two deponents, Low Thiam Hock and Choo Chin Thye, actively involved in this suit against Danaharta, only Choo Chin Thye has directly offered to give an undertaking. Low Thiam Hock has remained silent on the issue himself. Neither offered any information as to their financial resources. If
I the undertakings were offered as directors for the companies, that is of questionable value since the companies themselves are in default. In the circumstances it is impossible to estimate and ascribe any value to the offer of undertaking.

On balance it would be more convenient to refuse the injunction. An order for an early hearing would adequately accommodate the concerns by the plaintiff.

Application dismissed.

Reported by Moy Saw Han